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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,057	01/31/2002	Michael B. Zemel	UTR-104D1	8306

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EXAMINER	
FISHER, ABIGAIL L	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/066,057	ZEMEL ET AL.	
	Examiner	Art Unit	
	ABIGAIL FISHER	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 February 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,5,6,27-37,41-44,46-55,57 and 59-64* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 5-6, 27-37, 41-44, 46-55, 57, 59-64* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *2/13/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The examiner for your application in the USPTO has changed. Examiner Abigail Fisher can be reached at 571-270-3502.

Receipt of Amendments/Remarks filed on February 13 2008 is acknowledged. Claims 2-4, 7-26, 38-40, 45, 56 and 58 were/stand cancelled. Claims 1, 5-6, 27-37, 41-44, 46-55, 57, 59-64 are pending.

Response to Applicants Request for Withdrawal of the Notice of Withdrawn from Issue Under 37 C.F.R. § 1.313(b)

Applicant's arguments filed on February 13 2008 are acknowledged. The rejection recited in the Office action mailed on November 26 2007 is technically a new grounds of rejection because while Summerbell et al. had previously been cited, the rejection mailed on 11/26/07 contained secondary references that had previously not been utilized. The MPEP indicates that the director may withdraw an application from issue under 37 CFR 1.313 on his or her own initiative. 35 U.S.C. 151 and 37 CFR 1.313(b) do not authorize the USPTO to withdraw an application from issue after payment of the issue fee for any reason except: (1) a mistake on the part of the Office; (2) a violation of 37 CFR 1.56 or illegality in the application; (3) unpatentability of one or more claims; or (4) for interference. See 37 CFR 1.313 (b). The letter from the Office mailed 10/05/2007 indicates that the application is withdrawn from issue after payment of the issue fee due to a mistake on the part of the Office. **MPEP 1308 [R-5]**

Information Disclosure Statement

The information disclosure statement (IDS) submitted on February 13 2008 was considered by the examiner.

Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claim Objections

Claim 62 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 62 depends from claim 61. Claim 61 claims that the amount of calcium administered is above about 400 mg per day. Claim 62 claim increasing the dietary calcium to a level above 400 mg per day.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 5-6, 27-37, 41-44, 46-55, 57, 59-64 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the reply filed on March 8 2005, applicant amended the claims and added new claims 50-60. Applicant indicated that support for these new claims could be found in Table 4, rows 3 and 4 of the specification. Claim 52 claims that the daily amount of calcium is at least about 773 mg, claim 53 claims that daily amount of calcium is at least about 1346 mg. Table 4 shows support for 255, 484, 773, and 1346 mg. Therefore, applicant has support for 773 and 1346 mg or the range from 255 to 1346. However, Applicant does not have support for "at least" these amounts. At least indicates that there is no upper limit to the amount of calcium administered and Table 4 does not provide support for this upper limit. In the reply filed on October 4 2005, applicant amended claim 52 to be directed to a daily amount of at least about 1000 mg. Claims 61-64 were added. Claims 61 and 62 claim that the amount of calcium is in an amount of about 400 mg per day. Claim 63 claims increasing the amount of dietary calcium three fold. Claim 64 claims the amount of calcium is at least about 1000 mg per day. Once again applicant does not have support for these amendments. First it is unclear what three fold is referring to, three fold of 400? Three fold of 400 would be 1200 which applicant does not have support for in table 4. About 1000 is not close to supported

values of 773 or 1346 and about 400 is not close to the supported value of 484. Once again, at least indicates that there is no upper limit to the amount of calcium administered and Table 4 does not provide support for this upper limit. It is noted that Applicant would have support for the range 484 to 1346. Therefore, instant claims 1, 52-53, 61-64 do not have support for the claimed amount of calcium as currently written.

In the reply filed on March 8 2005 applicant added new claims 56 and 57. Claim 56 claims that the servings of calcium are in an amount of at least about 57 .Applicant indicated that support for these claims can be found in table 4, rows 3 and 4. The table provides support for the number of servings to be 14, 38, 57, t 1346, or from 14 to 1346. Therefore, instant claims 50 and 57 do not provide support for at least about 57 or at least about 102 servings of calcium per month.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 5-6, 27-37, 41-44, 46-55, 57, 59-64 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 50, and 61 as currently written are vague and indefinite. The claims are directed to “a method comprising”. It is unclear what this method is actually for. The claims comprise a step of administering but also disclose a therapeutically effect amount which indicates that some disorder is being treated. Therefore, it is unclear

what method is actually being claimed. The resulting claims do not clearly set forth the metes and bounds of the patent protection desired for the method.

Claims 1, 50, 52-53, 57, 61-63 and 64 as currently written are vague and indefinite. All of the claims contain the phase “at least about” or “above about”. "At least about” and “above about” are vague and indefinite because it is unclear what constitutes the lower limit for the particular amount being claimed. For instance, claim 1 indicates “at least about 773 mg per day”; however it is unclear if the lower limit of the dosage is at least 773 mg per day or about 773 mg per day.

For the purposes of applying art, "at least about" will be interpreted as stating "about".

Claims 1 and 61 contain the phrase “below ad lib”. Applicant has indicated that “below ad lib” is defined as without restraint or limit. Ad lib is a commonly used term that is understood to be the **unrestricted** intake of food or calories available to the point of satisfaction. However, claims 1 and 61 specifically restrict the amount of caloric intake to be about 200 to about 2500. Therefore, it is unclear how this is “ad lib” as applicants have indicated that “ad lib” means unrestricted. The presence of “below ad lib” before a restricted range causes the claim to be vague and indefinite.

Claim 62 is directed to a three fold increase. It is unclear what the three fold increase is in relation to. Is it three fold higher than 400 mg per day?

Response to Arguments

Applicant's arguments filed February 13 2008 have been fully considered but they are not persuasive. Applicants previously amended the claims from claiming a restricted caloric diet to "ad lib" to overcome the rejection of the vagueness of "restricted caloric diet". Restricted caloric diet was vague and indefinite because it was unclear what actually constituted a restricted caloric diet. Is a restricted caloric diet under 1000 calories, under 500 calories? It was unclear. Applicant amended the claim to recite "ad lib", which they have defined as without restraint or limit. However, claims 1 and 61 specifically restricts the amount of caloric intake to be about 200 to about 2500. Therefore, the rejection is maintained as it is unclear how this is "ad lib" as Applicants have indicated that "ad lib" means unrestricted. Furthermore, the presence of "below ad lib" before a restricted range causes the claim to be vague and indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Applicant Claims
2. Determining the scope and contents of the prior art.

3. Ascertaining the differences between the prior art and the claims at issue, and resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 5-6, 27-30, 32, 41-44, 46-55, 57, and 59-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Study: Calcium May Curb Weight Gain in Young Women (http://www.sciencedaily.com/releases/1999104199042107360 8.htm, April 21 1999, referred to in the Office action as "Science Daily", cited in PTO Form 1440) in view of Summerbell et al. (BMJ, cited in the Office action mailed on November 26 2007).

Applicant Claims

Applicant claims a method comprising in combination, during a period of time administering therapeutically effective amount of calcium in an amount of about 773 mg per day to an obese individual suffering from at least Grade I obesity with a BMI values

of about 25.0 and restricting said obese individual to a caloric intake below ad lib in a range of about 200 kcal to about 2500 kcal per day, wherein the individual loses weight during the period of time.

Determination of the Scope and Content of the Prior Art (MPEP §2141.01)

Science Daily is directed to a study of the effect of calcium on weight gain. It is disclosed that when overall calorie consumption is account for, calcium not only helps to keep weight in check but can be associated specifically with decreases in body fat (paragraph 1). It is disclosed that when women of the study consumed a diet of 1900 calories or less, those who consumed an average of 1000 mg of calcium per day showed an overall decrease in body weight (paragraph 4 and 5) especially when compared to women those consumed less than 1900 calories but averaged less than 780 mg of calcium per day. The women who averaged less than 780 mg of calcium actually gained body fat mass over the same period (paragraph 4). Women who received their calcium from dairy sources such as milk, yogurt and cheese showed more benefits than those who primarily used non-dairy sources such as vegetables, nuts, beans, and calcium supplements (paragraph 8). It is disclosed that women who consume calcium from dairy products or who consume at least 1000 mg per day of calcium may reap the most benefit (abstract, second paragraph).

Ascertainment of the Difference Between Scope the Prior Art and the Claims *(MPEP §2141.012)*

Science Daily does not specify utilizing calcium to induce weight loss in obese women. However, this deficiency is cured by Summerbell et al.

Summerbell et al. is directed to weight reducing diets. The diets of the trial were directed to reducing weight in patents with a body mass index (BMI) greater than 27 (abstract). Three diets were administered. Diet 1 was a control. Diet 2 was a milk only diet. Diet three was a milk plus diet, which consisted of milk with the addition of unlimited amount of a single food (page 1488, interventions). It is disclosed that in the milk only diet patients achieved the highest overall mean weight loss (page 1489, first paragraph).

Finding of Prima Facie Obviousness Rational and Motivation (MPEP §2142-2143)

It would have been obvious to one of ordinary skill in the art to combine the teachings of Science Daily and Summerbell et al. and utilize calcium in a method of inducing weight loss in an individual suffering from obesity. One of ordinary skill in the art would have been motivated to utilize calcium in this type of method because Science Daily indicates that calcium decreases body fat. Therefore, it would have been obvious to utilize calcium in an individual who needs to loose body fat such as an obese person. Furthermore Summerbell et al. indicates that this type of administration has been shown to induce weight loss in obese patients.

It would have been obvious to one of ordinary skill in the art to vary the amount of calcium to determine the optimum of amount of calcium for each individual. It would have been obvious to one of ordinary skill in the art at the time of the invention to engage in routine experimentation to determine optimal or workable ranges that produce expected results. Where the general conditions of a claim are disclosed in the

prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. **In re Aller, 220 F. 2d 454, 105 USPQ 233 (CCPA 1955).**

Absent any evidence to the contrary, and based upon the teachings of the prior art, there would have been a reasonable expectation of success in practicing the instantly claimed invention. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Regarding the administration of at least 57 or 102 servings of dairy per month (instant claims 1, 10, 12 and 19), the amount of calcium instant claimed and that of Science Daily is the same (at least 1000 mg/day). Therefore, depending on the source of the calcium it would have been obvious to one of ordinary skill in the art to determine the appropriate number of servings to consume in order to reach the required daily amount of at least 1000 mg/day.

Regarding instant claims 59 and 60, Summerbell et al. teach individuals with a BMI greater than 27, which would include those with Type II and Type III diabetes. Furthermore, it would have been obvious to one of ordinary skill in the art to administer calcium to an obese individual because Science Daily teaches that calcium causes weight loss. Obese individuals are a patient population that is in need of weight loss. Depending on the individual, the type of obesity will vary.

Claims 31, 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Science Daily in view of Summerbell et al. and in further view of Dietary Supplement Fact Sheet (cited in PTO Form 1449).

Applicant Claims

Claim claims that the calcium is contained in salmon, tofu, spinach, turnip greens, kale, and broccoli.

Determination of the Scope and Content of the Prior Art (MPEP §2141.01)

The teachings of Science Daily and Summerbell et al. are set forth above. It is disclosed that when overall calorie consumption is account for, calcium not only helps to keep weight in check but also can be associated specifically with decreases in body fat (paragraph 1). Women who received their calcium from dairy sources such as milk, yogurt and cheese showed more benefits than those who primarily used non-dairy sources such as vegetables, nuts, beans, and calcium supplements (paragraph 8).

Ascertainment of the Difference Between Scope the Prior Art and the Claims *(MPEP §2141.012)*

Science Daily does not indicate that the source of calcium is from salmon, tofu, spinach, turnip greens, kale, or broccoli. However, this deficiency is cured by the Dietary Supplement Fact Sheet.

The dietary supplement fact sheet indicates foods with sources of calcium include salmon, tofu, spinach, kale, turnip greens, and broccoli.

Finding of Prima Facie Obviousness Rational and Motivation (MPEP §2142-2143)

It would have been obvious to one of ordinary skill in the art to combine the teachings of Science Daily, Summerbell et al., and the Dietary Supplement Fact Sheet and utilize other sources of calcium. One of ordinary skill in the art would have been motivated to utilize other sources of calcium because Science Daily indicates that

vegetables can be used as non-dairy sources. Furthermore, it would provide consumers with more choices of sources of calcium, which would be beneficial for patient compliance.

Absent any evidence to the contrary, and based upon the teachings of the prior art, there would have been a reasonable expectation of success in practicing the instantly claimed invention. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Response to Arguments

While the rejection made in the Office action mailed on February 13 2006 was withdrawn, Applicant's arguments pertaining to Summerbell et al. will be discussed as that reference was maintained in the current rejection.

Applicant argues that Summerbell et al. does not disclose, teach or suggest that weight-related benefits are attributable to the calcium. Applicant argues that nowhere in Summerbell et al. it is disclosed that calcium directly induces weight loss.

Applicant's arguments filed February 13 2008 have been fully considered but are not deemed persuasive in view of the newly presented art. Science daily clearly indicates that is was known in the art at the time of the invention that calcium is directly responsible for the decreases in body fat seen in their two-year study (paragraph 1 and 4).

Applicant argues that they have previously submitted evidence showing the present invention's unexpected results. However the Applicant has not indicated where

these results have been presented. The examiner can only find Applicant's arguments in terms of unexpected results relating to their finding that calcium inducing weight loss has caused to a shift in the scientific community and the food industry who Applicant claims support and endorse the methods of the present invention. However, the Science daily article predates the filing of Applicant's application. Therefore, it was known in the art prior to Applicant's invention that calcium causes weight loss.

Double Patenting/Terminal Disclaimer

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

The terminal disclaimer filed on April 3 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of

US Patent No. 6384087 has been reviewed and are accepted. The terminal disclaimer has been recorded.

Claims 1, 5-6, 27-37, 41-44, 46-55, 57, 59-64 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7, 10-15 of copending Application No. 10/827296. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims overlap in scope.

The instant application claims a method comprising in combination, during a period of time administering therapeutically effective amount of calcium in an amount of about 773 mg per day to an obese individual suffering from at least Grade I obesity with a BMI values of about 25.0 and restricting said obese individual to a caloric intake below ad lib in a range of about 200 kcal to about 2500 kcal per day, wherein the individual loses weight during the period of time.

Copending '296 claims a method of avoid health problems in an individual at risk thereof due to excess body weight and/or an excess of body fat, the individual suffering form at least Grade I obesity, comprising in combination during a period of time: administer to the individual one or more servings of a dairy product comprising a sufficient amount of dietary calcium of at least about 773 mg per day to induce weight loss, reduce weight gain, and/or increase the metabolic consumption of adipose tissue in the individual, and maintaining the individual on a restricted caloric diet below ad lib in

a range of about 200 kcal to about 2500 kcal per day, wherein the individual is a women and the one or more servings is at least about 57 servings of dairy per month.

Copending '296 does not claim specific sources of the calcium. The difference between the instant application and copending '296 is that the instant application claims specific types of calcium sources.

The relationship between the instant application and copending '296 is a genus-species relationship. Spinach, supplements, diary products, etc. are particular types of calcium sources. Therefore, both the instant application and copending '296 are directed to similar subject matter.

Thus, the scopes of the copending claims overlap and thus they are obvious variants of one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1, 5-6, 27-37, 41-44, 46-55, 57, 59-64 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7, 10-17, 19-22 of copending Application No. 10/827307. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims overlap in scope.

The instant claims are set forth above.

Copending '307 claims a method of including weight loss and/or increasing the metabolic consumption of tissue in an individual suffering from obesity, wherein obesity

is selected from the group consisting of Grade I, Grade II, and Grade III obesity, wherein the method comprising in combination during a period of time administering to the obese individual one or more servings of one more calcium calcium-containing products where the one or more servings comprise an amount of dietary calcium of at least about 773 mg per day, sufficient to include with loss, and/or increase the metabolic consumption of adipose tissues, and restricting said obese individual to a caloric intake below ad lib in a range of about 200 kcal to about 2500 kcal per day where in the individual is a women and the one or more servings comprise at least about 57 servings of dairy per month.

Copending '307 does not claim specific sources of the calcium. The difference between the instant application and copending '307 is that the instant application claims specific types of calcium sources.

The relationship between the instant application and copending '307 is a genus-species relationship. Spinach, supplements, diary products, etc. are particular types of calcium sources. Therefore, both the instant application and copending '309 are directed to similar subject matter.

Thus, the scopes of the copending claims overlap and thus they are obvious variants of one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ABIGAIL FISHER whose telephone number is (571)270-3502. The examiner can normally be reached on M-Th 9am-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Abigail Fisher
Examiner
Art Unit 1616

AF

/Mina Haghighatian/
Primary Examiner
Art Unit 1616